

Truro Planning Board

Minutes of meeting Tuesday, 27 March 2007 – Truro Public Library

Members present: Nicholas Brown, Ansel Chaplin, William Golden, Deborah Paine, Karen Snow, Robert Weinstein, William Worthington (Chair).

Others attending: Monica Kraft; Charleen Greenhalgh, Assistant Town Administrator/Planner; Richard Lavin, Goodheart Properties III, LLC; Chet Lay, Slade Associates; Lester J. Murphy, attorney; Jamie Veara, Town Counsel; Stephen Williams; Benjamin Zehnder, attorney.

William Worthington called the meeting to order at 7:02 pm.

1. Minutes

The minutes of the meeting on 27 February were considered. Ms. Snow moved to accept the minutes as written; second by Mr. Weinstein. Vote: 5-0-1 (Ms. Paine abstaining as she was absent from the meeting). Mr. Brown arrived at this point.

The minutes of the working session on 6 March were considered. Ms. Snow moved to accept the minutes as written; second by Mr. Golden. Vote: 7-0-0.

2. Executive Session

Mr. Worthington moved that the Board move into executive session to consider ongoing litigation. Mr. Brown stepped down at this time. Mr. Worthington polled members individually for their vote: Mr. Chaplin, yes; Mr. Golden, yes; Mr. Weinstein, yes; Ms. Snow, yes; Ms. Paine, yes; Mr. Worthington, yes.

The open session of the meeting resumed at 7:43 pm.

3. Reorganization of the Board; Election of Officers

Mr. Worthington asked if Board members were amenable to moving this agenda item to later in the meeting; all agreed. Mr. Brown and Mr. Weinstein stepped down at this time.

4. Goodheart Properties III, LLC, 29 Old Outermost Road, Site Plan Review (Continuation from 27 February 2007 and 13 March 2007) – Representative: Benjamin Zehnder, attorney for the applicant

Mr. Brown and Mr. Weinstein recused themselves from the hearing and sat in the audience. Mr. Zehnder informed the Board that on 26 March he had received the Building Commissioner's decision: since the project does not add more than 1,000 square feet of gross floor area to an existing structure, a site plan review is not required under Section 70 of the Truro Zoning Bylaw. Mr. Worthington asked the Board if anyone was willing to move to approve withdrawal of the application without prejudice. Ms. Snow so moved; second by Ms. Paine. Stephen Williams then asked if the public could comment. Mr. Worthington asked Board members if there should be public comment, and members assented.

Mr. Worthington recognized Mr. Williams who stated that he was very upset with the Planning Board, which by this motion was abrogating their responsibility and doing the business of the applicant. Monica Kraft began to speak in opposition to the project, at which point Mr. Lavin, the applicant, strongly objected to her being permitted to do so, stating that because she had at one time served as his attorney, her commenting would be a violation of attorney-client privilege. Mr. Worthington informed Mr. Lavin that this was a matter between Mr. Lavin and Ms. Kraft,

not a matter for the Board to address. Ms. Kraft stated her position that a site plan review for this project is required by the zoning bylaw.

Mr. Zehnder reiterated that only an alteration of more than 1,000 square feet to an existing structure needs to come before the Planning Board. Ms. Kraft stated her contention that this project meets that definition and so requires a site plan review. Mr. Lavin interjected that at its last meeting the Planning Board had agreed, on the opinion of the Assistant Town Manager/Planner, that the Building Inspector (i.e. Commissioner) is the one to make a decision on whether a site plan review is required.

Mr. Williams then spoke, stating that at one time, he had been the Building Inspector and Zoning Officer in Truro for sixteen years, and since that time he had made a concerted effort to stay away from issues related to that position. He went on to say that this house [29 Old Outermost Road] was built after the creation of the Cape Cod National Seashore and that if he were the Building Inspector, he would grant a permit only to move the existing structure away from the dune; anything else would need to go to the Planning Board and to the Zoning Board of Appeals. He further stated that since the building was illegally constructed, it was not protected and that the planned construction goes against the intent of the Seashore, adding that this project raises very important issues that need more community review.

Ms. Snow asked Town Counsel Veara, who was present due to the executive session, if the Planning Board has any options since the Building Inspector has determined that site plan review is not required. Mr. Veara explained that determining whether site plan review is required is the decision of the Building Inspector and that anyone aggrieved by the decision can appeal to the Zoning Board of Appeals. He continued, stating that the Planning Board can vote on the motion for withdrawal and if the ZBA determines that the Building Inspector is in error, the applicant will have to come back to the Planning Board.

Mr. Worthington asked the Board if they wished to reconsider the motion. Ms. Snow asked if the Planning Board can be aggrieved by the Building Inspector's decision. Mr. Chaplin noted that withdrawal of the application can be with or without prejudice and expressed his opinion that it should be without. Mr. Worthington asked for a vote on the motion made earlier by Ms. Snow, seconded by Ms. Paine to approve withdrawal of the application without prejudice. Vote: 6-0-0.

Mr. Brown and Mr. Weinstein rejoined the meeting at this point.

5. Julianne Britt, 2-Lot Definitive Subdivision at 6 Nelson Drive and 31 Sylvan Lane
(Continuation from 9 January 2007 and 27 February 2007) – Representative: Lester J. Murphy, attorney for the applicant

Mr. Murphy informed the Board that discussions on issues of access are ongoing between the applicant and abutters and may result in a subdivision plan not being required. He noted that the time limit will expire on 4 April and requested a 60-day extension. Mr. Chaplin moved to grant the extension as requested; second by Mr. Weinstein. Vote: 7-0-0.

Mrs. Greenhalgh informed the Board that they needed now to vote on continuation to a date certain, and Mr. Murphy requested 1 May. Mr. Chaplin moved to continue to 1 May; second by Ms. Snow. Vote: 7-0-0.

6. Stella B. Chasteen and John K. Jencks, Endorsement of ANR Plan – Representative: Chet Lay, Slade Associates

Mr. Lay distributed copies of the plan to the Board; several members expressed great difficulty in reading the plan and that a cover letter would have been very helpful. After brief discussion Ms. Snow moved to accept plan 2007-006 as ANR; second by Mr. Brown. Vote: 7-0-0.

7. Reorganization of the Board; Election of Officers

Mr. Worthington informed the Board that leading the discussion on this agenda item falls to the senior member of the Board, who is Mr. Brown. Mr. Brown noted that he did have a break in service, asking if anyone objected to his designation as senior member; there was no objection.

Mr. Brown stated that the first order of business is the election of the Chair. Mr. Golden moved that Mr. Brown be elected Chair; second by Mr. Worthington. Ms. Snow expressed her opinion that Mr. Brown had done an excellent and exemplary job as Chair in the past, but that it is not a good idea to have the same chair for many years. She cited several additional reasons related to his recent history on the Board why she felt Mr. Brown should not be Chair. Mr. Brown responded, explaining the reasons for his actions. Mr. Weinstein stated that he was unaware of past history between Ms. Snow and Mr. Brown and that his sole practical concern was that Mr. Brown has had to recuse himself on matters before the Board more than half the time. Mr. Worthington responded that when Mr. Brown had previously been Chair and recused himself, it had not been a problem since the Vice Chair takes the chair in those situations.

Mr. Brown asked if there were other members who wished to be recognized. Ms. Snow stated that there have been numerous instances when she has had difficulty responding to persons who ask her how one of the most active realtors (Mr. Brown) can serve on the Planning Board, that this is perceived as a conflict of interest. There being no further comments, the Board voted on election of Mr. Brown as Chair. Vote: 6-1-0 (Ms. Snow voting no).

Mr. Brown asked for nominations for Vice Chair, and Mr. Worthington nominated Ms. Snow. There being no second, Mr. Weinstein nominated Mr. Chaplin; second by Mr. Golden. Mr. Weinstein stated that Mr. Chaplin brings a needed eye on matters coming before the Board all the time, by virtue of his legal background, extensive knowledge of long-standing issues, and his even-handed manner. There being no further discussion, the Board voted on the election of Mr. Chaplin as Vice Chair. Vote: 5-1-1 (Ms. Snow voting no; Ms. Paine abstaining).

Mr. Brown called for nominations for Secretary. Mr. Golden nominated Mr. Worthington; second by Ms. Paine. Ms. Snow voiced an objection, and Mr. Worthington withdrew his name, nominating Mr. Weinstein. Ms. Paine seconded the nomination. Mr. Weinstein asked for an explanation of the responsibilities of the Secretary, and Mr. Worthington responded that the Secretary takes minutes if both the recording secretary and the Assistant Town Administrator/Planner are absent. There being no further discussion, the Board voted on election of Mr. Weinstein as Secretary. Vote: 7-0-0.

8. Review of Board Policies, including Recusal

Members had received prior to the meeting a draft document on Planning Board policies prepared by Mrs. Greenhalgh.

Mr. Brown asked if anyone wished to speak to the topic of recusal. After some discussion it was agreed that it is up to each member to decide when to recuse him/herself. There was no response to Mr. Golden's question asking what happens if a member is challenged on this.

Mr. Chaplin remarked that he recalls a Board rule stating no one speaks to the press except the Chair. Mr. Brown noted that this is a difficult issue involving freedom of speech, recalling a

situation in which a Planning Board member wrote a letter to the editor, after which Town Counsel ruled that the member could not sit on any decision on that topic. He continued, stating that speaking to the press could result in a member's having to absent him/herself on a topic and that the Board needs the thinking and input of all members. That said, he went on, there will be situations in which speaking with the press is appropriate and beneficial.

Ms. Paine raised another topic, stating that there is nothing in the policies that requires members to address each other and those in attendance at meetings formally as Mr. and Ms. While Mr. Golden agreed, Mr. Chaplin stated that he finds it very troublesome when applicants and attorneys are addressed on a first-name basis as it gives the appearance of a special relationship and can be misunderstood. This is the reason, he stated, that he had suggested using a formal manner of address.

Mr. Brown asked how members felt about addressing each other and attendees formally when in public session and informally when not. Ms. Paine stated that no other board she has ever sat on or that she has been before does this, that she has known some meeting participants for many years, and that she will not remember to use formal address. Mr. Brown then asked that the Board move on to other topics.

Ms. Snow asked whether requests for extension of the statutory time limit should be in writing, to which Mrs. Greenhalgh replied in the affirmative. Further discussion on the language of the draft document followed, and additional revisions were made. Mr. Brown suggested keeping the document open for further review for approximately 30 days before finalizing it; all agreed. He also suggested that another duty of the Secretary be to serve as back-up to the Assistant Town Administrator/Planner (Mrs. Greenhalgh) for monitoring statutory timelines and asked Mr. Weinstein if he is willing to do this. Mr. Weinstein responded that he is willing if Mrs. Greenhalgh would provide details on timelines, which she agreed to do. Mr. Brown noted that it would be helpful to have extension agreements on hand at meetings.

9. Town Meeting

Discussion then turned to the Affordable Accessory Housing Bylaw that the Planning Board has placed as an article on the warrant for Town Meeting. All Board members agreed that it would be appropriate to invite the Truro Housing Authority to the Board meeting on 10 April to consider a joint presentation on the article at Town Meeting.

10. CCNS Letter

The Board then took up the draft letter prepared by Mr. Chaplin to George Price, Superintendent of the National Seashore, to follow-up the discussion with him and Lauren McKean, Seashore Planner, at the meeting on 13 March. Several members indicated the letter was fine as is; Mr. Weinstein offered a copy he had annotated to make the letter stronger. Mr. Worthington moved that the Board allow Mr. Chaplin and Mr. Weinstein to work jointly on a final version to be sent without further discussion by the Board (unless the changes suggested by Mr. Weinstein are unacceptable to Mr. Chaplin); second by Ms. Paine. Vote: 7-0-0.

The meeting adjourned at 9:25 pm.

Respectfully submitted,

Sharon A. Sullivan, Recording Secretary